

DATE ISSUED: July 12, 2000

REPORT NO. 00-138

ATTENTION: Land Use and Housing (LU&H) Committee
Agenda of July 19, 2000

SUBJECT: Administrative Appeals for Alleged Violations of the Stormwater Management and Discharge Control Ordinance, San Diego Municipal Code (SDMC) Section 43.0301 et seq.

REFERENCE: San Diego Municipal Code Section 12.0401 et seq.
San Diego Municipal Code Section 43.0301 et seq.

SUMMARY

Issue - Should there be a final administrative hearing before the LU&H when the City pursues any administrative remedy against a person alleged to have violated the Stormwater Management and Discharge Control Ordinance?

Manager's Recommendations -

1. Direct the City Attorney to revise SDMC 43.0312(b) eliminating the right to a administrative hearing before the LU&H.
2. Schedule special LU&H sessions to hear administrative appeals during the time period necessary to draft and approve the revisions to SDMC 43.0312.

Fiscal Impact - Elimination of the right to a final administrative appeal hearing before the LU&H would reduce enforcement costs associated with the Storm Water Pollution Prevention Program.

BACKGROUND

The City of San Diego enacted the *Stormwater Management and Discharge Control Ordinance*, SDMC 43.0301 et seq., in 1993. The ordinance seeks to ensure the health, safety and general welfare of San Diegans by prohibiting pollutants from entering the storm water conveyance system, thereby enhancing the water quality of the City's beaches, bays, and wetlands. Due to public and business community concerns regarding enforcement of the new ordinance, City Council initially directed the Storm Water Pollution Prevention Program (SWPPP) to educate violators as the first enforcement response. Public education was the primary enforcement tool initially utilized by SWPPP. Alternative enforcement methods were also used if the discharge was intentionally or exceptionally dangerous to the environment.

In June 1999, City Council directed SWPPP to increase its enforcement activities. Nine staff positions were approved in the Fiscal Year 2000 budget to implement available administrative enforcement remedies, such as civil penalties and citations, as well as continued pursuit of civil and criminal prosecution when warranted.

The newly formed enforcement unit is scheduled to begin issuing administrative citations in June 2000. Fines range from \$100 for a first offense, \$250 for a second offense, and \$500 for a third offense.

Any person issued an administrative citation may file a notice of appeal within ten (10) calendar days of receiving the citation. Procedures for administrative enforcement hearings are set forth in SDMC 12.0401 et seq. The alleged violator will be afforded a public hearing before a neutral, third-party hearing officer. At the hearing, the City bears the burden of proof to establish the existence of a violation by a preponderance of the evidence. Each party shall also have the opportunity to cross-examine witnesses and present evidence in support of his or her case. The hearing officer will then issue an "Administrative Enforcement Order" setting forth his or her decision on the matter. These orders are subject to judicial review. See SDMC 12.0412.

DISCUSSION

Presently, if the City pursues an administrative remedy (e.g., administrative citation) against any person alleged to have violated the Stormwater Management and Discharge Control Ordinance, such person shall have the right to a final administrative appeal before the LU&H. See SDMC 43.0312(b). The number of potential hearings required to be held is quite large. It is estimated that the SWPPP enforcement unit will issue approximately 650 citations per year. It is anticipated that citations will be routinely appealed. In addition, the enforcement unit will be utilizing additional administrative enforcement remedies in the future. In each instance, the alleged violator will have the right to request a final administrative hearing before the LU&H.

Due to the number of potential appeals, LU&H may wish to establish procedures to schedule and hear these matters. It may also be desirable to hold special sessions of the LU&H to accommodate the hearings.

It should also be noted that the City would sustain substantial costs in terms of staff time and

resources for each appeal. These costs would be disproportionate to the fine amounts actually imposed (e.g., administrative citations would impose fines no greater than \$500). The elimination of the right to a final administrative appeal before the LU&H would, therefore, decrease the City's enforcement costs.

In addition, the right to a final administrative appeal before LU&H uniquely applies only to violations of the Stormwater Management and Discharge Control Ordinance. This requirement does not apply to other code enforcement provisions or departments, e.g., Neighborhood Code Compliance. These departments need only comply with the requirements set forth in SDMC 12.0401 et seq. SWPPP enforcement unit, on the other hand, must not only comply with SDMC 12.0401 et seq., but also the demands of a final administrative appeal before the LU&H.

CONCLUSION

It is recommended that the City Attorney be directed to revise SDMC 43.0312(b) and eliminate the right to a final administrative hearing before the LU&H for violations of the Stormwater Management and Discharge Control Ordinance. This requirement appears to be unnecessary. Judicial review is available once the hearing officer's "Administrative Enforcement Order" becomes final. In addition, it is inconsistent with the administrative enforcement hearing procedures followed by all other code enforcement departments.

ALTERNATIVES

1. Do not eliminate the right to a final administrative appeal before the LU&H and schedule special LU&H sessions for administrative appeals as necessary.
2. Do not eliminate the right to a final administrative appeal before the LU&H and hear the administrative appeals as part of the existing monthly meeting.

Respectfully submitted, D. Cruz Gonzalez Transportation Director		Approved: Frank Belock, Jr.
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Attachment: San Diego Municipal Code Section 43.0312

Note: See the City Clerk's web page at www.sannet.gov/city-clerk/document.shtml to

access the attachment.